

**STATE OF MICHIGAN  
IN THE SUPREME COURT**

**PEOPLE OF THE STATE OF MICHIGAN,**  
Plaintiff-Appellee,

Michigan Supreme Court No. \_\_\_\_\_

-v-

*WAYNE*  
**CHARLES FRANCISCO,**  
*^* Defendant-Appellant.

Court of Appeals No. 252188 *ap 5/26/05*

Trial Court No. 03-189882 *FH*

*ok /*  
Oakland County Prosecutor  
Attorney for Plaintiff  
County Courthouse  
Pontiac, MI 48341

*Oakland*  
*R. Nichols*

Charles Francisco #188314  
Defendant in Pro Per  
Bellamy Creek Corr. Fac.  
1727 W. Bluewater Hwy.  
Ionia, MI 48846  
\_\_\_\_\_/

**PRO PER APPLICATION FOR LEAVE TO APPEAL**

*129035*  
*AML*  
*8/2*  
*IP*  
Defendant - Appellant Charles Francisco, was found guilty on 9/23/03, of Home Invasion - 1<sup>st</sup> Degree (Hab Crim 3<sup>rd</sup> Off), contrary to MCL 750.110A2. The proceeding was a jury trial. Defendant-Appellant was sentenced by the Honorable Rudy J. Nichols of Oakland County on October 17, 2003, to a term of 8.5 years to 40 years.

Defendant-Appellant is currently in prison at the Bellamy Creek Corr. Fac., 1727 W. Bluewater Hwy., Ionia, MI 48846. The Michigan Court of Appeals affirmed Defendant-Appellant's conviction and sentence on 5/26/05. A copy of the decision is

attached. This application is filed within 56 days of the Court of Appeals decision.

### **STATEMENT OF FACTS**

For purposes of brevity, Defendant respectfully refers this Honorable Court to his brief in the Court of Appeals.

## GROUND - ISSUES RAISED IN THE COURT OF APPEALS

I want the Court to consider the issues as raised in my Court of Appeals brief and the additional information below.

### ISSUE I

THE FOLLOWING TWO OFFENSE VARIABLES WERE SCORED INCORRECTLY: IS AN OV 9 SCORE OR 10 EXCESSIVE AND IN DEFIANCE OF LEGISLATIVE INTENT WHERE NO VICTIM WAS PLACED IN DANGER OF INJURY OR DEATH BY THE INTRUDERS; AND IS AN OV 13 SCORE INCORRECT WHERE THE SENTENCING COURT FAILS TO EMPLOY THE INSTRUCTION THAT THE FIVE YEAR PERIOD UNDER CONSIDERATION INCLUDE THE SENTENCING OFFENSE.

The Court should review the Court of Appeals decision on this issue because:

- ☐ The issue raises a serious question about the legality of a law passed by the legislature;
- ☐ The issue raises a legal principle which is very important to Michigan law;
- ☒ The Court of Appeals decision is clearly wrong and will cause an important injustice to me;
- ☐ The decision conflicts with a Supreme Court decision or another decision of the Court of Appeals.

### Arguments

The legal arguments and factual basis for this argument has been well defined in the attached exhibit, defendant's application for leave in the Court of Appeals. For matters of brevity, defendant respectfully refers this Honorable Court to that exhibit-brief.

This Court should grant leave to appeal the decision of the court of appeal.

## ISSUE II

THE TRIAL COURT ABUSED ITS DISCRETION IN CONDUCTING AN INADEQUATE VOIR DIRE OF A RETIRED PROBATION OFFICER WHO HAD BEEN ASSIGNED TO THAT COURT, IN PREVENTING DEFENSE COUNSEL FROM POSING THOROUGH QUESTIONS TO HER, AND IN DENYING DEFENSE COUNSEL'S MOTION FOR AN ADDITIONAL PEREMPTORY CHALLENGE WHERE THE FORMER PROBATION OFFICER WAS SELECTED TO JOIN THE VENIRE AFTER MR. FRANCISCO'S LAST PEREMPTORY CHALLENGE HAD BEEN EXERCISED.

The Court should review the Court of Appeals decision on this issue because:

- ☐ The issue raises a serious question about the legality of a law passed by the legislature;
- ☐ The issue raises a legal principle which is very important to Michigan law;
- ☒ The Court of Appeals decision is clearly wrong and will cause an important injustice to me;
- ☐ The decision conflicts with a Supreme Court decision or another decision of the Court of Appeals.

### Arguments

The legal arguments and factual basis for this argument has been well defined in the attached exhibit, defendant's application for leave in the Court of Appeals. For matters of brevity, defendant respectfully refers this Honorable Court to that exhibit-brief.

This Court should grant leave to appeal the decision of the court of appeal.

## ISSUE III

AFTER THE TRIAL COURT PROPERLY GRANTED SEPARATE JURIES, IT ABUSED ITS DISCRETION BY EXPOSING MR. FRANCISCO'S JURY TO HIS CO-DEFENDANT'S DEFENSE INCLUDING THE CO-DEFENDANT'S TESTIMONY PRESENTING AN INCONSISTENT, MUTUALLY EXCLUSIVE, AND IRRECONCILABLE DEFENSE AND THE TESTIMONY OF CO-DEFENDANT'S PARENT ALL OF WHICH RESULTED IN PREJUDICE TO MR. FRANCISCO

The Court should review the Court of Appeals decision on this issue because:

- ☐ The issue raises a serious question about the legality of a law passed by the legislature;
- ☐ The issue raises a legal principle which is very important to Michigan law;
- ☒ The Court of Appeals decision is clearly wrong and will cause an important injustice to me;
- ☐ The decision conflicts with a Supreme Court decision or another decision of the Court of Appeals.

### **Arguments**

The legal arguments and factual basis for this argument has been well defined in the attached exhibit, defendant's application for leave in the Court of Appeals. For matters of brevity, defendant respectfully refers this Honorable Court to that exhibit-brief.

This Court should grant leave to appeal the decision of the court of appeal.

RELIEF REQUESTED

For the above reasons, I request that this Court GRANT leave to appeal,  
APPOINT a lawyer to represent me, and GRANT any other relief this Court decides that  
I am entitled to receive.

Sincerely,



**Charles Francisco #188314**  
Defendant-Appellant in Pro Per  
Bellamy Creek Corr. Fac.  
1727 W. Bluewater Hwy.  
Ionia, MI 48846

Dated: June 29, 2005